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7 Attorneys for Plaintiff
NAVIGATORS MANAGEMENT COMPANY, INC.
8 in its individual capacity and on behalf of
NAVIGATORS INSURANCE COMPANY, INC.
9 a/s/o ARRAY TECHNOLOGIES, INC.

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 NAVIGATORS MANAGEMENT
COMPANY, INC. in its individual
15 capacity and on behalf of
NAVIGATORS INSURANCE
16 COMPANY, INC. a/s/o ARRAY
TECHNOLOGIES, INC.,

17
18 Plaintiff,

19 v.
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21 IMC SHIPPING (CHINA) CO. LTD.;
and M/V PACIFIC WAVE, *in rem*,
22

23 Defendants.
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Case No. 2:23-cv-01204

**VERIFIED COMPLAINT FOR
DAMAGE TO CARGO**

(Damages in the sum of \$1,408,227.89)

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1 Plaintiff's complaint follows:

2 1. Plaintiff NAVIGATORS MANAGEMENT COMPANY, INC. in its
3 individual capacity and on behalf of NAVIGATORS INSURANCE COMPANY,
4 INC. a/s/o ARRAY TECHNOLOGIES, INC. ("Plaintiff"), is now, and at all times
5 herein material was, a corporation duly organized and existing by virtue of law, and
6 was the insurer of the cargo that is the subject of this action and of Array
7 Technologies, Inc. ("Array"), which was the owner of the hereinafter described
8 cargo.

9 2. Plaintiff is informed and believes that defendant IMC SHIPPING
10 (CHINA) CO. LTD. (collectively "IMC") is now, at all times material herein was, a
11 corporation duly organized and existing by virtue of law.

12 3. Plaintiff is informed and believes that *in rem* defendant M/V PACIFIC
13 WAVE, was and is a Marshall Islands flagged cargo ship with IMO no. 9801275,
14 and was engaged in transporting goods by sea for hire. Plaintiff is informed and
15 believes that the M/V PACIFIC WAVE will be within the district while the action is
16 pending.

17 4. At all relevant times mentioned herein, the *in rem* Defendant M/V
18 PACIFIC WAVE was chartered, owned and/or operated by IMC.

19 5. Plaintiff's complaint contains a cause of action for damage to cargo
20 arising under a statute of the United States, namely the Carriage of Goods by Sea
21 Act, 46 U.S.C. § 30701 note, *et. seq.* (2006) ("COGSA") and is therefore within the
22 jurisdiction of this Court pursuant to 28 U.S.C. § 1331, as more fully appears herein.
23 Additionally, the Court has admiralty jurisdiction pursuant to 28 U.S.C. § 1333.
24 These are admiralty and maritime claims within the meaning of Rule 9(h), Federal
25 Rules of Civil Procedure, as hereinafter more fully appears.

26 6. Plaintiff is informed and believes, and on the basis of such information
27 and belief alleges that, on or about December 22, 2021, IMC and Array entered into
28 a charter party (the "Charter Party"), whereby IMC agreed to procure a vessel able

1 to suitably carry Array's cargo of torque beams (the "Cargo") from Masan, Korea to
2 Stockton, California. A true and correct copy of the Charter Party is attached hereto
3 as **Exhibit A**.

4 7. On or about January 5, 2022, at Masan, Korea, IMC received and
5 loaded Array's cargo onto the appointed vessel, M/V PACIFIC WAVE. IMC in
6 good order and condition, and in exchange for valuable consideration, Defendants
7 agreed to transport and carry the shipment it received from Masan, Korea to
8 Stockton, California.

9 8. However, in Stockton, California, Defendants delivered the Cargo in a
10 damaged condition, causing damages of at least \$1,408,227.89.

11 9. Prior to the loss, Plaintiff issued its policy of insurance whereby
12 Plaintiff agreed to indemnify the owner of said cargo, or its assigns, against loss of
13 or damage to the Cargo. As a result of the loss, Plaintiff was obligated to indemnify
14 the owner of the Cargo or its assigns against the loss, and has paid \$1,358,227.89 on
15 account of the loss, after application of the \$50,000.00 policy deductible, which was
16 borne by Array. Array subsequently assigned its claim for its \$50,000.00 deductible
17 to Plaintiff. Plaintiff's total damages are therefore \$1,408,227.89.

18 **FIRST CAUSE OF ACTION**

19 **(Breach of Contract)**

20 10. Plaintiff refers to and incorporates herein by reference paragraphs 1-9
21 as though fully set forth herein.

22 11. Defendants and plaintiff's subrogor entered into a valid written
23 contract, namely the Charter Party, dated December 22, 2021, for valuable
24 consideration, under which Defendants were obligated to arrange for and be
25 responsible for the safe carriage of the Cargo. In relevant part, the Charter Party
26 provides as follows:

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1 2. Owner's Responsibility Clause

2 [IMC] are to be responsible for loss of or damage to the goods or
3 for delay in delivery of the goods only in case the loss, damage
4 or delay has been caused by personal want of due diligence on
5 the part of [IMC] or their Manager to make the Vessel in all
6 respects seaworthy and to secure that she is properly manned,
7 equipped and supplied, or by the personal act or default of [IMC]
8 or their Manager.

9 ...

10 10. Loading

11 Vessel to be fully suitable for the carriage of subject steel cargo.

12 The Master shall supervise stowage of the cargo as well as
13 instruct one of his officers to supervise all loading, handling and
14 discharge of the cargo, and he is to furnish Charterers with
15 stowage plans as well as other documents customarily used.

16 Owners confirm that the cargo will be loaded into holds which
17 are suitable for the carriage of the cargo, unobstructed by center-
18 line beam/bulkheads, tanks, reefer and locker space. The cargo to
19 be loaded on ship's floor / tank top / suitable flat surface with
20 sufficient space taken into account and provided suitable space
21 for working with fork lifts or other mechanical equipment..

22 Cargo not to be loaded in deep tanks and tunnel areas. Owners
23 confirm sufficient tank top strength to proper
24 load/carry/discharge Charterer's cargo. Vessel to supply
25 sufficient light for night work, if required.

26 12. In breach of said contract, Defendants failed to arrange for and
27 complete the safe carriage of the Cargo and instead had the Cargo delivered in a
28 damaged condition.

29 13. Plaintiff has therefore been damaged in the sum of \$1,408,227.89, or
30 another amount according to proof at trial, no part of which has been paid, despite
31 demand therefor.

32 WHEREFORE, Plaintiff prays relief as hereinafter set forth.

33 **SECOND CAUSE OF ACTION**

34 **(Bailment)**

35 14. Plaintiff refers to and incorporates herein by reference paragraphs 1-13
36 as though fully set forth herein.

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1 15. In receiving and arranging for the shipment of the Cargo, either by
2 themselves or through their agents, Defendants acted as bailees for hire, setting up a
3 bailment agreement as a matter of law. In breach of said bailment agreement,
4 Defendants failed to safely deliver said Cargo in the same good order and condition
5 as when received.

6 16. Plaintiff has therefore been damaged in the sum of \$1,408,227.89, or
7 another amount according to proof at trial, no part of which has been paid, despite
8 demand therefor.

9 WHEREFORE, Plaintiff prays relief as hereinafter set forth.

10 **THIRD CAUSE OF ACTION**

11 **(Damage to Cargo - COGSA)**

12 17. Plaintiff refers to and incorporates herein by reference paragraphs 1-16
13 as though fully set forth herein. This cause of action is plead in the alternative.

14 18. Defendants, under contracts of carriage, namely the Charter Party
15 between IMC and Array, the operative mate's receipt, and others, and in return for
16 good and valuable consideration, agreed to carry the Cargo from Masan, Korea to
17 Stockton, California, and there deliver the Cargo to the lawful owner of the Cargo in
18 the same good order, condition, and quantity as when received.

19 19. Thereafter, in breach of and in violation of said agreements, Defendants
20 did not deliver the Cargo in the same good order, condition, and quantity as when
21 received. To the contrary, Defendants delivered the Cargo in a damaged condition.

22 20. Plaintiff has therefore been damaged in the sum of \$1,408,227.89, or
23 another amount according to proof at trial, no part of which has been paid, despite
24 demand therefor.

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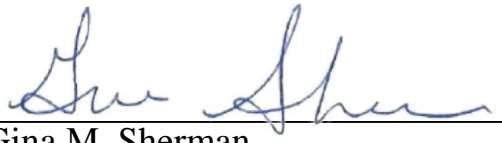
1 VERIFICATION

2 I, Gina M. Sherman, declare as follows:

- 3 1. I am a Major Case Subrogation Specialist for Plaintiff NAVIGATORS
4 MANAGEMENT COMPANY, INC., and am authorized to verify this
5 Complaint.
6 2. The matters stated in the Verified Complaint are true to the best of my
7 knowledge, information, and belief.

8 I declare under penalty of perjury under the laws of California and the United
9 States of America that the foregoing is true and correct.

10 Executed at Springfield, Massachusetts, on February 16, 2023

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12 _____
13 Gina M. Sherman